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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY CHARLES HOLMES,

Defendant and Appellant.

A103910

(Solano County
Super. Ct. No. FCR206172)

Appellant pled no contest to possession of cocaine base (Health & Saf. Code, § 11350, subd. (a)), and was granted probation. He contests the trial court's determination that he was ineligible for deferred entry of judgment (DEJ) under Penal Code section 1000, et seq.¹ We affirm.

I. BACKGROUND

On January 11, 2002, in a previous case, appellant pled no contest to petty theft (§ 484), and was granted probation on conditions that included service of five days in county jail. His probation was revoked when he failed to report to jail. On June 17, 2002, appellant admitted the violation, and his probation was reinstated. His probation was revoked again on March 4, 2003, after he was arrested in the present case for possession of cocaine base, possession of a smoking device, and trespass. After denial of his motion for DEJ in the case at bench, appellant pled no contest to the possession

¹ Unless otherwise indicated all further statutory references are to the Penal Code.

charge, the other charges were dismissed, and he was placed on probation under section 1210.1 (Prop. 36). Appellant admitted violating probation in the petty theft case and his probation in that case was reinstated.

II. DISCUSSION

A defendant charged with a violation of Health and Safety Code section 11350 is eligible for DEJ as long as he meets the six eligibility requirements set forth in section 1000, subdivision (a). Appellant was denied DEJ under section 1000, subdivision (a)(4) (hereafter subdivision (a)(4)), which renders a defendant ineligible if his “probation or parole has ever been revoked without thereafter being completed.” When appellant sought DEJ his probation had been “revoked without thereafter being completed,” and he concedes that he is ineligible for DEJ under the literal terms of subdivision (a)(4). However, he submits that a literal reading of this statute would produce an absurd result in his case. (*People v. Birkett* (1999) 21 Cal.4th 226, 231 [statute’s plain meaning must be followed unless it leads to absurd result]; *People v. Pieters* (1991) 52 Cal.3d 894, 898 [same].)

Appellant argues that subdivision (a)(4) should apply only where probation is revoked for reasons other than commission of a DEJ-qualifying drug offense. To rule otherwise, he reasons, would produce the anomalous result that commission of a DEJ-qualifying offense would render the defendant ineligible for DEJ. However, appellant was *already* ineligible for DEJ under subdivision (a)(4), *before* he committed the drug offense, because his probation had previously been revoked for failing to report to jail. Thus, appellant was not ineligible for DEJ solely because he committed a DEJ-qualifying offense, and the anomaly he posits is not presented here.

Appellant maintains that the prior revocation cannot be the basis for denying him DEJ because the prosecution contested his eligibility for DEJ based solely on the current drug offense. However, our review extends to results, not reasons, and we are not limited by the arguments that were urged below in favor of the judgment. (See *People v. Gibson* (1987) 195 Cal.App.3d 841, 853.) We can assume without deciding that appellant’s drug

offense would not by itself have made him ineligible for DEJ, because there was another sufficient ground for the court's decision.

Appellant notes that the present version of subdivision (a)(4) replaced a previous one that disqualified from DEJ any defendant with a record of “ ‘probation or parole violations.’ ” (See *People v. Bishop* (1992) 11 Cal.App.4th 1125, 1129, fn. 3.) But the broader current eligibility standard does not merely require that probation, if violated, be reinstated; it requires that probation, if revoked and reinstated, be completed. The Legislature could reasonably demand that a defendant complete a revoked and reinstated probation to demonstrate his amenability to rehabilitation through DEJ. (See *People v. Martinsen* (1987) 193 Cal.App.3d 843, 849.) Thus, there was no reason to depart from the plain terms of the statute in appellant's case. The court correctly determined that he was ineligible for DEJ under subdivision (a)(4).

III. DISPOSITION

The judgment is affirmed.

Kay, P.J.

We concur:

Sepulveda, J.

Rivera, J.